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No. 90-1515

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

GEORGE YARCHAK, as Father/Administrator of the Estate of DAVID EVERETT YARCHAK, deceased,

Petitioner,

vs.

MUNFORD, INC.,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Alabama

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Exclusive Remedy Provision, as set out in the Alabama Workers' Compensation Statute §25-5-53, violate the Equal Protection Clause of the Constitution of the United States?

LIST OF PARTIES

Petitioner is George Yarchak, as Father/Administrator of the Estate of David Everett Yarchak. Respondent is Munford, Inc.; Majik-Market, Inc., a division of Munford, Inc.

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STATEMENT OF THE CASE

For their statement of the case and the facts material to the consideration of the questions presented in the petition and the brief in opposition, Respondent, adopts the statement of the case and statement of the facts set forth in the opinion issued in this case by the Alabama Supreme Court, attached to the petition as (Appendix A). In addition, Respondent states the following facts.

The issues raised by the Petitioner, George Yarchak, in his appeal to the Alabama Supreme Court were that the exclusive remedy provisions of the Alabama Workers' Compensation Act (hereinafter referred to "Workers' Compensation Act"), Alabama Code 1975, §25-5-52, §25-5-53, are unconstitutional in that they violate Article 1, Section 1 and 13 of the Alabama Constitution, 1901, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Petitioner, in his original complaint, made no claim for benefits to which he would have been entitled under the Workers' Compensation Act, specifically §25-5-67 (Burial Expenses), and §25-5-77 (Medical and Hospital Expenses). Petitioner, throughout his appeal to the Alabama Supreme Court and the petition filed to this Court, has insisted that he has made no claim for benefits under the Workers' Compensation Act. To the contrary, Petitioner has filed a complaint in the Circuit Court of Jefferson County, Alabama, entitled *George Yarchak, as Administrator of the Estate of David Everett Yarchak v. Munford, Inc., et al.*, bearing case number CV 90-8373, (copy of the complaint in said case is attached hereto as Appendix B). In fact, it has been pointed out by the Petitioner in

both his brief to the Alabama Supreme Court and the Petition in this case, that the Workers' Compensation Act provides no benefits to the estate of employees who leave no dependents. The Alabama Supreme Court, in reviewing the issues stated by the Petitioner, has found that the Workers' Compensation Act does not violate the Equal Protection Provision of the Fourteenth Amendment to the United States Constitution, and has affirmed the holding of the lower court with regard to the dismissal of the plaintiff's complaint.

The Petitioner has raised three issues in his Petition for Certiorari to this Court.

1. Do the exclusive remedy provisions of the Alabama Workers' Compensation Statute violate the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States?

2. Do the exclusive remedy provisions of the Alabama Workers' Compensation Act violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

3. Does the Alabama Workers' Compensation Statute violate the right to freely contract as provided in Article 1, Section 10 of the Constitution of the United States? (Page i of Petition for Certiorari of George Yarchak)

Issues 1 and 3 are being raised for the first time by Mr. Yarchak in his petition for certiorari and were not considered by the Alabama Supreme Court as issues in the appeal of the original dismissal from the Circuit Court of Jefferson County, Alabama. (See Appendix A).

REASONS FOR DENYING PETITION

The Respondents in this case, Munford, Inc., and Majik-Market, Inc., a division of Munford, Inc., respectfully state that this Court should not consider the petition of George Yarchak on both jurisdictional and procedural grounds. The Petitioner has raised three issues in his petition for certiorari. Two of the three issues were, specifically, the contention that exclusive remedy provisions of the Workers' Compensation Act violate the Due Process Clause of the Fourteenth Amendment to the United States constitution and that the compulsory nature of the Workers' Compensation Act violated Article 1, Section 10 of the Constitution, were clearly not raised by Petitioner in his appeal to the Alabama Supreme Court, nor were those issues considered by the Court as evidenced from the opinion issued by the Alabama Supreme Court in the instant case. (See Appendix A).

Since the Petitioner did not raise these issues to the Alabama Supreme Court, and consequently, they were not considered by the Court in its holding, this Court lacks jurisdiction to reexamine the final judgment. This proposition has been previously stated by this Court on numerous occasions, more recently, in the case of *Webb v. Webb*, 101 S.Ct. 1889, 451 U.S. 493, 68 L.Ed.2d 392 (1981). See also *Helvering v. Minnesota Tea Co.*, 296 U.S. 378, 80 L.Ed. 284 (1935). In the above-mentioned case, this Court dismissed a petition for certiorari due to the petitioner's failure to raise the federal question in its state court claim. In its opinion delivered by Justice White the Court stated:

> This Court has frequently stated that when 'the highest state court has failed to pass upon a

> federal question it will be assumed that the omission was due to want of proper presentation in the state court, unless the aggrieved party in this court can affirmatively show the contrary'. Citing *Street v. New York*, 394 U.S. 576, 582, 22 L.Ed.2d 572, 89 S.Ct. 1354, (1969). See also *Fuller v. Oregon*, 417 U.S. 40, 50, n11, 40 L.Ed.2d 642, 94 S.Ct. 2116 (1974); *Chambers v. Mississippi*, 410 U.S. 284, 290, n3, 35 L.Ed.2d 297, 93 S.Ct. 1038 (1973); *Bailey v. Anderson*, 326 U.S. 203, 206-207, 90 L.Ed. 3, 66 S.Ct. 66 (1945).

Although the Petitioner, in his complaint filed in the underlying case, stated causes of action claiming violation of both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and a violation of the right to contract as stated in Article 1, Section 10 of the United States Constitution, he addressed only the Equal Protection argument in his brief along with claims that the Workers' Compensation Act violated certain sections of the Alabama Constitution (1901). This fact is clearly evidenced by the statement of the issues by the Alabama Supreme Court in its opinion. (See Appendix A). Clearly, the petition for writ of certiorari is due to be denied on jurisdictional and procedural grounds.

The Petitioner's primary contention in his appeal of the Circuit Court's ruling, as stated in his brief to the lower court and in this petition for certiorari, is based on the assertion that the employer/employee may no longer make an election to be covered by the Workers' Compensation Act due to several amendments to the Workers' Compensation Act in 1973. This issue has been previously decided by the Alabama Supreme Court and directly addressed in the case of *Pipkin v. Southern Electrical and Pipefitting*, 358 So.2d 1015 (Ala. 1978), where the Alabama

Supreme Court held that the 1973 amendments to the Workers' Compensation Act did not effect the elective nature of the Act, and accordingly upheld the Act's constitutionality. The Alabama Supreme Court in the instant case reaffirmed the initial ruling in the *Pipkin* case. (See Appendix A).

Petitioner obviously does not agree with the Alabama Supreme Court's interpretation of the Workers' Compensation Act. However, in this petition, Mr. Yarchak cites no authority upon which he bases his claim that the 1973 amendments to the Workers' Compensation Act, removed the elective nature of the Act, thus depriving his client of equal protection as required by the Fourteenth Amendment to the United States Constitution. In fact, the Petitioner cites as authority for his position, a law review article and the concurring opinion of Justice Jones in the case of *Hughes v. Decatur General Hospital*, 514 So.2d 935 (Ala. 1987). In his concurring opinion, Justice Jones simply states that the Workers' Compensation Act, in limiting the benefits to an individual who dies without dependents is, in his opinion, unfair. However, the Petitioner fails to point out the fact that Justice Jones, while not agreeing with the majority as to the morality of the holding agreed that he was bound by the prior precedent to concur in the holding that the Workers' Compensation Act is not repugnant to the Fourteenth Amendment to the Constitution of the United States.

In effect, the Petitioner is requesting this Court to legislate a change in the Alabama Law because he disagrees with the Alabama Supreme Court's interpretation of the law. And at the same time, the Petitioner has provided no legal precedent for the court to look to in

making a change in the law other than his belief that the Alabama Supreme Court did not properly interpret the Alabama Workers' Compensation Statute. Petitioner is requesting that this Court review the Alabama Supreme Court's interpretation of an Alabama State Statute. This Court has clearly stated its views with regard to its review of a state court's interpretation of its own State laws. The precedent clearly states that an objection to a state's Supreme Court's application of a state law does not raise a federal question appropriate for review by the United States Supreme Court. *Agins v. City of Tiburon,* 100 S.Ct. 2138, 447 U.S. 255, 65 L.Ed.2d 106 (1980). See also *Patterson v. Colorado,* 205 U.S. 454, 27 S.Ct. 556, 51 L.Ed. 1879 (1907).

Furthermore, this Court has long held that it will not review a state court's decisions that are rested on adequate and independent state law, even if the judgments raised a federal constitutional issue. See *Klinger v. Missouri,* 80 U.S. 257, 20 L.Ed. 635 (1872). This longstanding precedent is specifically applicable in this case, where the petitioner's contention, that his Constitutional Rights have been violated, is based entirely on his assertion that the Alabama Supreme Court has improperly interpreted the 1973 amendments to the Alabama Workers' Compensation Act. Clearly, this Court should deny the petition for certiorari on the jurisdictional and procedural grounds alone.

When you review the Petitioner's claim that the Workers' Compensation Act violated his Fourteenth Amendment right to equal protection which was considered by the Alabama Supreme Court, on its merits, the only conclusion that can be reached is that the claim must

fail. Petitioner concedes that his position as a dependent of a deceased employee under the Workers' Compensation Act is not a suspect class. Accordingly, in order for the Workers' Compensation Statute to meet constitutional, muster under the Fourteenth Amendment, the State of Alabama need only show that the purpose of the Workers' Compensation Act has rational basis to withstand constitutional scrutiny, and if the legislation is rationally related to a legitimate state interest, it should be sustained.

Petitioner cites no federal precedent to support his contention that the Alabama law is repugnant to the United States Constitution, nor does he cite any decisions handed down by this Court, nor other United States Court of Appeals that are contrary to the holding of the Alabama Supreme Court in the instant case.[1] In fact, the only case cited as legal precedent by the Petitioner for his equal protection challenge, *Park v. Rockwell International*, 124 N.H. 894, 436 A.2d 1136 (1981), is clearly distinguishable. The New Hampshire court in the *Parks* case looked only to issues relating to the Constitution of the State of New Hampshire, the New Hampshire Workers' Compensation and Wrongful Death Acts. The Petitioner has made absolutely no contention, nor would it be correct that the Workers' Compensation Statute of the States of New Hampshire and Alabama and the corresponding wrongful death acts of those states are in any way similar. Accordingly, this case is clearly distinguishable from the *Park* case.

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[1] See 28 U.S.C. §1257, U.S. Sup. C. R. 10.1.

Furthermore, Petitioner has failed to point out that while the exclusive remedy provisions of the Workers' Compensation Act preclude his recovery under the Alabama Wrongful Death Statute against the employer of the decedent, he would not be precluded from receiving benefits under the Act.[2] Petitioner may also maintain a cause of action for wrongful death under the Alabama Wrongful Death Statute, Code of Alabama (1975), §6-5-410, against any other person or corporation, other than his employer, for the death of his son.

This Court has traditionally upheld the right of a state to legislate for the welfare of its citizens if the state action is rationally related to a legitimate state purpose. In fact, this Court, in reviewing Workers' Compensation laws which provide limited benefits to employees and at the same time remove the common law defenses of employers and requirement of proving fault against the employer do not violate the Fourteenth Amendment Constitutional Right to equal protection. See *New York Central Railroad v. White*, 243 U.S. 188, 37 S.Ct. 247, 61 L.Ed. 677 (1917); *Sheehan & Company v. George Shuler*, 265 U.S. 371, 68 L.Ed. 1061 (1924). In these cases, this Court has clearly upheld the Workers' Compensation Statute which provides limited benefits to an employee in return for granting immunity from further action against the employer, under constitutional scrutiny of the Fourteenth Amendment.

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[2] Code of Alabama (1975) §25-5-67, §25-5-77, allow for the recovery of burial and medical expenses.

The United States Court of Appeals for the Fifth Circuit in construing the very statute and issue raised by the Petitioner, upheld the immunity provisions of the Workers' Compensation Act. See *Patterson v. Sears, Roebuck & Co.*, 196 F.2d 947 (C.A. 5 1952).

The Alabama Supreme Court has also been asked to decide the issue of the constitutionality of the Workers' Compensation Act on several occasions. See *Slagle v. Reynolds Metals*, 344 So.2d 1216 (Ala. 1977). In the case of *Reed v. Brunson*, 527 So.2d 102 (Ala. 1988), the Alabama Supreme Court held as follows:

> Alternatively, it is clear that the classification of the plaintiff's inherent in this statute is susceptible to only minimal scrutiny by the Courts under the Equal Protection Doctrine. It involves no suspect class, nor does it impinge upon a fundamental right. Consequently, the 'rational basis' test under the Equal Protection Doctrine is to be applied, and the classification will be upheld if it is rationally related to a legitimate legislative purchase. E.g., *Board of Trustees of the Policeman's and Fireman's Retirement Fund v. Cardwell*, 400 So.2d 402 (Ala. 1981), (Citing *San Antonio School District v. Rodriguez*, 41' U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

The Court went further to state:

> 'We think it beyond doubt that our previous discussion of the legislature's purposes in adopting the Act demonstrates that the classification in question rationally relates to those purposes. This is classic economic and social welfare legislation, and it is a cannon of modern constitutional law that such legislation will not be invalidated under the Equal Protection Doctrine.' See generally, 2R. *Rotunda J. Nowak and J.*

Young, treatise on constitutional: *Substance and Procedure* §18.3 (1986).

This Court in construing an act of the Alabama Legislature with regard to its constitutionality under both the Due Process and Equal Protection provisions of the Constitution of the State of Alabama and the United States, has stated as follows:

> To assure that we, the Judiciary, do not exercise power reserved by the Constitution of the Legislature, and thereby violate the fundamental law separating the powers to government into three distinct departments, we have held that when testing the constitutionality of a statute the only question for the court to decide is one of legislative power, not of legislative expediency or legislative wisdom, necessity utility, and expediency are exclusively for the Legislature to determine and are matters with which the courts have no concern. *Reed v. Brunson*, 527 So.2d 102 (Ala. 1988); *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 9-10, 18 So.2d 810, 815 (1944); *Fireman's Fund American Insurance Co. v. Coleman*, 394 So.2d 334, 352-353 (Ala. 1980) (Shores, J., concurring in the result.)[3]

The United States Supreme Court in *Lindley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79, 31 S.Ct. 337, 340, 55 L.Ed. 369 (1911), which involved a state statute constitutionally challenged as being arbitrary, wrote:

> The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take

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[3] *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So.2d 810, 815 (1944).

> from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at that time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Bachtel v. Wilson*, 204 U.S. 36, 41 [S.Ct. 243, 245, 51 L.Ed. 357]; *Louisville and Nashville R.R. Co. v. Melton*, 217 U.S. 36 [30 S.Ct. 676, 54 L.Ed. 921]; *Ozan Lumber Co. v. Union County Bank*, 207 U.S. 251, 256 [28 S.Ct. 89, 91, 52 L.Ed. 195]; *Munn v. Illinois*, 94 U.S. 113, 132 [24 L.Ed. 77]; *Henderson Bridge Co. v. Henderson City*, 173 U.S. 592, 615 [19 S.Ct. 553, 562, 43 L.Ed. 823].

Chief Justice Warren, writing for a majority of the United States Supreme Court in *McGowan v. Maryland*, 366 U.S. 420, 425-26, 81 S.Ct. 1101, 1104-05, 6 L.Ed.2d 393 (1961), said:

> Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which effect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that,

> in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. (Citations omitted.)

Furthermore, courts of other jurisdictions, in looking at the very issue stated in this case, have resolved this argument in substantially the same manner. See *Taylor v. Southeast-Harris Western Corp.*, 694 P.2d 1160, 1162-63 (Alas. 1985) (Appendix A at pages 11 and 12). See *Casillas v. S.W.I.G.*, 96 N.M. 84, 628 P.2d 329 (Ct. App. 1981), cert. denied, 96 N.M. 116, 628 P.2d 686 (N.M. App. 1981), *appeal dismissed*, 454 U.S. 934 (1981), and *Padilla v. Industrial Commission of Colorado*, 969 P.2d 273 (Colo. 1985). The Petitioner's case fails not only in the jurisdictional and procedural areas of the law, it also fails on substantive issues raised. Accordingly, the Alabama Workmens' Compensation Act does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION

In summary, the Petitioner, through able counsel, has requested that this Court overrule sound precedent of this Court and of the Alabama Supreme Court. In support of his contentions, Petitioner has cited one case from the State of New Hampshire, which is distinguishable on its face from the present case; a law review article from the University of Alabama; and the concurring opinion of a justice of the Alabama Supreme Court, who, while not agreeing with the majority as to the fundamental fairness of the holding, stated the very proposition that any

changes should be borne by the legislature of the State of Alabama and not the court system with regard to this Act. Petitioner has cited no federal court precedent which would indicate that the holding of the Alabama Supreme Court in this case is contrary to any federal law, nor holding of a federal appeals court, nor the United States Supreme Court, as required by Supreme Court Rule 10.1 and 28 USC 1257. In fact, the opinion of the Alabama Supreme Court in this case clearly follows the precedent previously stated by this Court, Courts of Appeals of the United States, and courts of highest jurisdiction in other states when looking at similar factual issues. In view of the above, the only conclusion that can be reached in this case is that the Petitioner has failed to present a claim that should be reviewed by this Court. Respondents, therefore, respectfully request this Court to deny the petition for certiorari.

Respectfully submitted,

DONALD D. LUSK
Attorney for Respondents

APPENDIX A

SUPREME COURT OF ALABAMA

SPECIAL TERM, 1990

88-1652

George Yarchak, as father and administrator of the estate of David Everett Yarchak

v.

Munford, Inc., et al.

Appeal from Jefferson Circuit Court
(CV-89-6232)

STEAGALL, JUSTICE.

George Yarchak, as administrator of the estate of his son, David Everett Yarchak, appeals from the judgment dismissing the complaint as to Munford, Inc., and Majik Market, a division of Munford, Inc., as well as from the summary judgment for the attorney general in Yarchak's suit seeking damages for the wrongful death of his son and a judgment declaring that the exclusive remedy provisions of the Workmen's Compensation Act (hereinafter referred to as "the Act"), Ala. Code 1975, §§ 25-5-52 and -53, are unconstitutional.[1]

David Yarchak was employed by Munford, Inc., as a clerk in one of its Majik Market convenience stores in

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[1] Although Yarchak's complaint did not seek funeral or medical benefits pursuant to Ala. Code 1975, §§ 25-5-67 and -77, Munford, Inc., contends that it paid those expenses on David Yarchak's behalf. The record, however, is silent with regard to the validity of that contention.

Birmingham. While David was working at the store on November 26, 1988, he was shot to death by an unknown assailant. David left no spouse or dependents.

On appeal, George Yarchak argues that the Act violates Article 1, §§ 1 and 13, of the Alabama Constitution (1901) and the equal protection clause of the 14th Amendment to the United States Constitution because it limits the benefits available to the estates of employees who die leaving no dependents to funeral and medical expenses, while it provides substantially higher compensation to employees who are merely injured or who die leaving dependents.[2]

This precise issue was raised recently in *Landers v. O'Neal Steel, Inc.*, [Ms. 88-971, June 22, 1990] ___ So.2d ___ (Ala. 1990); however, this Court affirmed the summary judgment for O'Neal Steel and the attorney general on procedural grounds and, thus, did not address the constitutional argument.[3]

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[2] Article I, § 1, is Alabama's equivalent to the equal protection clause of the 14th Amendment to the United States Constitution, and it reads "[t]hat all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness." Article I, § 13, states "[t]hat all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay."

[3] Landers failed to rebut O'Neal Steel's prima facie showing that it was entitled to a judgment as a matter of law. He also failed to serve the attorney general with notice, pursuant

(Continued on following page)

This Court has previously upheld various provisions of the Act in the fact of constitutional challenges, most recently in *Ex parte Adkins*, [Ms. 88-1488, July 27, 1990] ___ So.2d ___ (Ala. 1990). In that case. David Adkins argued that Ala. Code 1975, § 25-5-57(a)(4), which allows an employer, under certain circumstances, to request a review of a workmen's compensation claim following final adjudication, was unconstitutional because it did not provide the employee with the same right. Applying it did not provide the employee with the same right. Applying the "rational basis" test, this Court disagreed, holding that the classification was rationally related to the legislative purpose of giving employers an economic incentive to rehabilitate employees.

Another recent case, *Reed v. Brunson*, 527 So.2d 102 (Ala. 1988), upheld the validity of Ala. Code 1975, § 25-5-11(c)(1), which limits actions against co-employees to those based on willful conduct that results in injury or death. In that case, we applied both the vested rights approach and the common law rights approach in determining that § 25-5-11(c)(1) did not violate § 13 of the Alabama Constitution.

Yarchak argues that a wrongful death action is common law in nature and that, as such, its removal as a remedy by the exclusivity provisions of the Act is subject to the two-pronged analysis enunciated by Justice Shores in her opinion concurring in the result in *Fireman's Fund*

(Continued from previous page)

to Ala. Code 1975, § 6-6-227, that he was challenging the constitutionality of a state statute. In this case, Yarchak did serve the attorney general with such notice.

Am. Ins. Co. v. Coleman, 394 So.2d 334 (Ala. 1980), and applied in *Reed v. Brunson*, supra.

We disagree with the argument. This Court has consistently held that wrongful death actions are statutory, *Downtown Nursing Homes, Inc. v. Pool*, 375 So.2d 465 (Ala. 1979), *cert. denied*, 445 U.S. 930 (1980), and, therefore, that they may be modified, limited, or repealed as the legislature sees fit. *Slagle v. Parker*, 370 So.2d 947 (Ala. 1979).

Slagle v. Parker held that the legislature could abolish an employee's right to bring a wrongful death action against a co-employee because a cause of action for wrongful death did not exist at common law. "Where common-law rights are altered or abolished, this Court will review such legislation more strictly than normal. Where no common law right is affected, a judicial deference to the legislature is required; however, the legislation may not be arbitrary or capricious." *Lankford v. Sullivan, Long & Hagerty*, 416 So.2d 996, 1000 (Ala. 1982). Thus, we must decide whether the Act's preclusion of a cause of action for wrongful death (see §§ 25-5-52 and -53) is arbitrary or capricious.

It is apparent that the Act is designed to financially aid an employee and/or his dependents in the event of a job-related injury or death. In that regard, this Court has written:

> " 'The statute creates two distinct rights – one for the benefit of the workman; the other for the benefit of his dependents. To the workman it gives compensation for disability caused by injuries sustained while in the performance of his duties. This is intended as compensation to him for loss of earnings. To his dependents it

> gives compensation for his death if caused by the injury. This is intended as compensation for loss of the support which they would have received from him if he had lived.' "

United States Steel Corp. v. Baker, 226 Ala. 538, 545, 97 So.2d 899, 905 (1957) (quoting *Tierney v. Tierney & Co.*, 176 Minn. 464, 223 N.W. 773 (1929).

Compensation any greater than that – in the form of benefits to or a cause of action for wrongful death by the estate of an employee who leaves no dependents – would clearly exceed the purpose of the Act. As Justice Maddox stated in his special concurrence in *Johnson v. Ralls*, 286 Ala. 565, 571, 243 So.2d 673, 677 (1970), "the wisdom of allowing the personal representative of a deceased employee who leaves no dependents to maintain a wrongful death action against the deceased employee's employer is for the legislature, not for this Court."

The nature of workmen's compensation awards has been explained as follows:

> "Not only is the award trimmed on all sides – as to kind of injury, elements of damage, and maximum dollar amount – to ensure that it can never exceed the amount necessary to prevent want during disability; *the award itself is completely cut off in most jurisdictions when, through the death of the worker without dependents, for example, there is no further need to worry about anyone's becoming destitute.*"

1 A. Larson, *Larson's Workmen's Compensation Law* § 2.60, at 12-13 (1990) (emphasis added).

Finally, we note that *Pipkin v. Southern Electrical & Pipefitting Co.*, 358 So.2d 1015 (Ala. 1978), held that the 1973 amendments to the Act did not affect the elective

aspect of the Act, only the *procedures* governing whether the employer and employer will be bound by the Act.

Based on the foregoing analysis, we find that §§ 25-5-52 and -53 of the Act are not arbitrary or capricious and that they do no violate Article I, § 13, of the Alabama Constitution.

With regard to Yarchak's equal protection argument, we recognize initially that, because no suspect class is involved, that portion of the Act that limits benefits available to the estates of employees who die leaving no dependents to funeral and medical expenses must have a rational basis to withstand constitutional scrutiny. *Reed v. Brunson*, supra. If the legislation is rationally related to a legitimate state interest, it will be sustained. *Ex parte Adkins*, supra.

Alaska's workmen's compensation act has similar provisions pertaining to exclusivity and funeral and medical benefits for the estates of employees who die without dependents. That state's supreme court resolved the same issue as is presented here, as follows:

> "Here the legislature has chosen to provide greater compensation to the estates of those deceased workers leaving dependents, i.e. persons, such as children and spouses, who are generally dependent, at least in part, upon the deceased worker's salary for their own support. The fact that they are entitled to favored treatment, over the estates of workers leaving no dependents, reflects a legislative determination that *the former require greater compensation, because of the need to replace the income that provided support for those dependent upon the deceased worker prior to his death.*

> "This determination, in our judgment, is entirely reasonable. The Workers' Compensation Act provides many benefits. Some of those benefits may be realized by the worker himself, prior to his death, such as the compensation payable when the worker is injured but not killed. Other benefits accrue only in the event of his death. All, however, are part of the overall plan. Thus viewed, we are satisfied that there is a fair and substantial relationship between the overall purpose of the Workers' Compensation Act and the particular limitation that applies in this case. Accordingly, we hold that the Act does not deprive [the decedent's] estate of equal protection of the law, under either the state or federal constitution."

Taylor v. Southeast-Harrison Western Corp., 694 P.2d 1160, 1162-63 (Alaska 1985) (emphasis added). Two other jurisdictions have reached the same result. See *Casillas v. S.W.I.G.*, 96 N.M. 84, 628 P.2d 329 (Ct.App. 1981), *cert. denied*, 96 N.M. 116, 628 P.2d 686 (N.M.App. 1981), *appeal dismissed*, 454 U.S. 934 (1981), and *Padilla v. Industrial Commission of Colorado*, 696 P.2d 273 (Colo. 1985). See, also, *Lackey v. Jefferson Energy Corp., Inc.*, 439 So.2d 1290 (Ala.Civ.App. 1983) (holding that *Slagle v. Parker*, supra, foreclosed the argument that § 25-5-52 and -53 are unconstitutional).

We conclude that the classification at issue here is rationally related to a legitimate state interest: to provide, after an employee's death, only for those individuals who were dependent upon the decedent's salary when he or she was alive. Thus, the dismissal as to Munford, Inc.,

and Majik Market and the summary judgment for the attorney general are affirmed.

AFFIRMED.

Maddox, Almon, Shores, Adams, and Houston, JJ, concur.

Jones, J., concurs specially.

APPENDIX B

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CASE NO. CV90 8373

GEORGE YARCHAK, AS FATHER AND ADMINISTRATOR OF THE ESTATE OF DAVID EVERETT YARCHAK

Plaintiff

v.

MUNFORD, INC.; MAJIK MARKET, A DIVISION OF MUNFORD, INC.

Defendants

COMPLAINT

(Filed Oct. 30, 1991)

The plaintiff demands of the defendant benefits due him arising out of the Worker's Compensation Act of Alabama based upon the following facts:

1. The plaintiff, George Yarchak, is the father of David Everett Yarchak, deceased, and is the duly appointed Administrator of his estate. George Yarchak is a resident citizen of Jefferson County, Alabama.

2. The defender, Munford, Inc. is, upon information and belief, a Georgia corporation doing business by agent in Jefferson County, Alabama.

3. The defendant, Majik Market, upon information and belief, is a wholly owned subsidiary or division of Munford, Inc. doing business by agent in Jefferson County, Alabama.

3. At the time the injuries were received on November 26, 1988, the deceased, David Everett Yarchak, was employed by the defendant as a clerk for one of the defendants' convenience stores located at 101 Acten Road in Birmingham, Jefferson County, Alabama.

4. At all times pertinent hereto, the defendant, Munford, Inc. and Majik Market, was an employer and was at all times subject to the coverage of the Alabama Worker's Compensation Act.

5. On November 26, 1988, the decedent, David Everett Yarchak, while acting within the line and scope of his employment, was shot to death during a robbery.

6. Immediately after the injury and within the statutory time limit required by the Worker's Compensation Act of Alabama, the defendant was given notice of the death and of the plaintiff's claims for benefits.

WHEREFORE, PREMISES CONSIDERED, the plaintiff demands of the defendant that he be awarded benefits in accordance with the Alabama Worker's Compensation Act, plus costs of these proceedings.

The plaintiff requests that the Law Offices of G. Daniel Evans, Suite 101, 1736 Oxmoor Road, Birmingham, Alabama 35209 be authorized to represent him in these proceedings and that they be paid such compensation as may be provided by the Court and the laws of the State of Alabama.

/s/ George Yarchak
George Yarchak as Father and
Administrator of the Estate of
David Everett Yarchak,
Deceased

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, George Yarchak, the plaintiff herein, hereby make oath in due form of law that I have read the foregoing petition for compensation and am familiar with the facts and allegations made therein and the same are true and correct of my own knowledge except those made upon information and belief and these are verily believed to be true.

/s/ George Yarchak
George Yarchak

Sworn to and subscribed before me this 25th day of October, 1990.

/s/ Janet B. Illegible
Notary Public

RESPECTFULLY SUBMITTED

/s/ G. Daniel Evans
G. Daniel Evans
1736 Oxmoor Road
Suite 101
Birmingham, Alabama 35209
(205) 870-1970

PLAINTIFF'S ADDRESS
c/o G. Daniel Evans
DEFENDANT'S ADDRESS
Agent for Service: